

### **REMARKS**

Claims 1, 2, 4-12, 14-17 and 19-24 are pending in the present application. Applicant has amended claims 1, 6, 7, 16 and 24 and cancelled claims 11, 15 and 21-23 herein. Applicant respectfully requests reconsideration of the claims based on the following remarks.

Support for the claim amendments is found in the specification, figures and claims. Accordingly applicant submits that no new matter has been introduced by the claim amendments.

Claim 11 was objected to because claim 11 failed to positively recite any structural limitations. Claim 11 has been cancelled herein.

Claims 1, 2, 4, 5, 16, 17 and 19-24 were rejected under 35 U.S.C. §103(a) as being unpatentable over Susil WO02/22015, in view of Wang et al., U.S. Patent No. 5,657,429, further in view of Onik, U.S. Patent No. 4,583,538.

Independent claim 1, as amended, recites in part:

"generating a first signal that is indicative of respiratory states of the person over time; determining whether an amplitude of the first signal is within a predetermined amplitude range, the predetermined amplitude range having an upper threshold value and a lower threshold value; and

moving the end effector along the second trajectory path toward the target position when the amplitude of the first signal is within the predetermined amplitude range, and stopping movement of the end effector when the amplitude of the first signal is not within the predetermined amplitude range."

Applicant concurs with the Examiner that Susil does not provide any teaching of monitoring a respiratory state of a subject over time. In particular, Susil does not provide any teaching of: "determining whether an amplitude of the first signal is within a predetermined amplitude range, the predetermined amplitude range having an upper threshold value and a lower threshold value", as recited in claim 1 as amended. Further, neither Wang et al. or Onik provide any teaching of the foregoing limitations of claim 1. In particular, the portions of Onik referenced by the Examiner,

(i.e., Onik (col. 2, lines 20-22, col. 6, lines 43-46) and col. 9, lines 15-27) do not teach the foregoing limitations.

Further, Susil, Wang et al., and Onik do not provide any teaching of: "moving the end effector along the second trajectory path toward the target position when the amplitude of the first signal is within the predetermined amplitude range, and stopping movement of the end effector when the amplitude of the first signal is not within the predetermined amplitude range." as recited in claim 1 as amended. In contrast, Onik only guides an instrument when respiration actions of the person are "identical" to one another. See Onik, col. 9, claim 5, lines 15-27.

Accordingly, because the combination of Susil, Wang et al. and Onik does not teach each and every limitation of claim 1 as amended, applicant submits that claim 1, and claims 2, 4 and 5 that depend from claim 1, are allowable over these references.

Independent claim 16, as amended, recites in part:

"code for determining whether an amplitude of the first signal is within a predetermined amplitude range, the predetermined amplitude range having an upper threshold value and a lower threshold value;

code for moving the end effector along the second trajectory path toward the target position when the amplitude of the first signal is within the predetermined amplitude range; and

code for stopping movement of the end effector when the amplitude of the first signal is not within the predetermined amplitude range."

Applicant submits that the combination of Susil, Wang et al. and Onik does not provide any teaching of: "code for determining whether an amplitude of the first signal is within a predetermined amplitude range, the predetermined amplitude range having an upper threshold value and a lower threshold value", as recited in claim 16 as amended.

Further, the combination of Susil, Wang et al. and Onik does not provide any teaching of:

"code for moving the end effector along the second trajectory path toward the target position when the amplitude of the first signal is within the predetermined amplitude range", as recited in claim 16 as amended.

Further, the combination of Susil, Wang et al. and Onik does not provide any teaching of: "code for stopping movement of the end effector when the amplitude of the first signal is not within the predetermined amplitude range", as recited in claim 16 as amended.

Accordingly, because the combination of Susil, Wang et al. and Onik does not teach each and every limitation of claim 16 as amended, applicant submits that claim 16, and claims 17, 19 and 20 that depend from claim 16, are allowable over these references.

Independent claim 24, as amended, recites in part:

"generating a first signal that is indicative of respiratory states of the person over time;  
determining whether an amplitude of the first signal is within a predetermined amplitude range, the predetermined amplitude range having an upper threshold value and a lower threshold value; and

moving the end effector along the second trajectory path toward the target position when the amplitude of the first signal is within the predetermined amplitude range, and stopping movement of the end effector when the amplitude of the first signal is not within the predetermined amplitude range."

Applicant submits that the combination of Susil, Wang et al. and Onik does not provide any teaching of: "determining whether an amplitude of the first signal is within a predetermined amplitude range, the predetermined amplitude range having an upper threshold value and a lower threshold value", as recited in claim 24 as amended.

Further, the combination of Susil, Wang et al. and Onik does not provide any teaching of: "moving the end effector along the second trajectory path toward the target position when the amplitude of the first signal is within the predetermined amplitude range, and stopping movement of

the end effector when the amplitude of the first signal is not within the predetermined amplitude range", as recited in claim 24 as amended.

Accordingly, because the combination of Susil, Wang et al. and Onik does not teach each and every limitation of claim 24 as amended, applicant submits that claim 24 is allowable over these references.

Claims 6-12, 14 and 15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Susil WO02/22015, in view of Wang et al., U.S. Patent No. 5,657,429, further in view of Onik, U.S. Patent No. 4,583,538, further in view of Fore, U.S. Patent No. 4,838,279.

Independent claim 6, as amended, recites in part:

"a respiratory monitoring device configured to generate a first signal that is indicative of respiratory states of the person over time...

the third computer configured to determine whether an amplitude of the first signal is within a predetermined amplitude range, the predetermined amplitude range having an upper threshold value and a lower threshold value; and

an end effector insertion device having the end effector adapted to be inserted into the person, the second computer inducing the end effector insertion device to move the end effector along the second trajectory path toward the target position when the amplitude of the first signal is within the predetermined amplitude range, and stopping movement of the end effector when the amplitude of the first signal is not within the predetermined amplitude range"

Applicant submits that the combination of Susil, Wang et al., Onik, and Fore does not provide any teaching of: "the third computer configured to determine whether an amplitude of the first signal is within a predetermined amplitude range, the predetermined amplitude range having an upper threshold value and a lower threshold value", as recited in claim 6 as amended.

Further, the combination of Susil, Wang et al., Onik, and Fore does not provide any teaching of: "the second computer inducing the end effector insertion device to move the end effector along the second trajectory path toward the target position when the amplitude of the first signal is within

the predetermined amplitude range, and stopping movement of the end effector when the amplitude of the first signal is not within the predetermined amplitude range", as recited in claim 6 as amended.

Accordingly, because the combination of Susil, Wang et al., Onik, and Fore does not teach each and every limitation of claim 6 as amended, applicant submits that claim 6, and claims 7-10, 12, 14 which depend from claim 6, are allowable over these references.

In view of the remarks discussed above, it is respectfully submitted that the present application is in condition for allowance. Such action is most earnestly solicited. If for any reason the Examiner feels that consultation with applicant's attorney would be helpful in the advancement of prosecution, the Examiner is invited to call the telephone number below for an interview.

If there are any charges due with respect to this Response or otherwise, please charge them to Deposit Account No. 06-1130, maintained by the applicant's attorney.

Respectfully submitted,

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